

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

THE COUNTY COMMISSION OF
LINCOLN COUNTY,

Plaintiff,

v.

Civil Action No. 2:17-cv-03366

WEST VIRGINIA BOARD OF PHARMACY,
et al.,

Defendants.

MAYOR VIVIAN LIVINGGOOD, ON BEHALF OF
THE TOWN OF GILBERT,

Plaintiff,

v.

Civil Action No. 2:17-cv-03369

WEST VIRGINIA BOARD OF PHARMACY,
et al.

Defendants.

MAYOR REBA HONAKER, ON BEHALF OF
THE CITY OF WELCH,

Plaintiff,

v.

Civil Action No. 1:17-cv-03364

WEST VIRGINIA BOARD OF PHARMACY,
et al.,

Defendants.

MAYOR CHARLES SPARKS, ON BEHALF OF
THE TOWN OF KERMIT,

Plaintiff,

v.

Civil Action No. 2:17-cv-03372

WEST VIRGINIA BOARD OF PHARMACY,
et al.,

Defendants.

MAYOR ROBERT CARLTON, ON BEHALF OF
THE CITY OF WILLIAMSON,

Plaintiff,

v.

Civil Action No. 2:17-cv-03532

WEST VIRGINIA BOARD OF PHARMACY,
et al.,

Defendants.

THE COUNTY COMMISSION OF
MERCER COUNTY,

Plaintiff,

v.

Civil Action No. 1:17-cv-03716

WEST VIRGINIA BOARD OF PHARMACY,
et al.,

Defendants.

MAYOR RAAIMIE BARKER, ON BEHALF OF
THE TOWN OF CHAPMANVILLE,

Plaintiff,

v.

Civil Action No. 2:17-cv-03715

WEST VIRGINIA BOARD OF PHARMACY,
et al.,

Defendants.

**CARDINAL HEALTH'S UNOPPOSED MOTION AND STIPULATION
FOR PHASED IDENTIFICATION OF NONPARTIES AT FAULT**

Defendant Cardinal Health 110, LLC ("Cardinal Health") intends to identify nonparties to whom it contends fault should be allocated in each of the above-captioned cases. Cardinal Health and Plaintiffs agree and stipulate that identification should occur in two or more phases and offer the following grounds for this motion:

1. West Virginia law provides that fault may be allocated to nonparties as well as to parties. *See* W. Va. Code § 55-7-13d(a)(1). A defendant who seeks to allocate fault to nonparties must identify them within 180 days after service of process. *See id.* § 55-7-13d(a)(2). Nonparties must be identified by name and address if that information is available by the 180-day deadline. *See id.* Otherwise, the defendant submitting the notice must provide "the best identification of the nonparty which is possible under the circumstances." *Id.*
2. In the above-captioned cases, Defendants have been unable to take discovery that would allow them to identify nonparties who are at fault, because the cases are stayed while remand motions remain pending.

3. Accordingly, a listing of categories of nonparties at fault is “the best identification of the nonpart[ies] which is possible under the circumstances.” W. Va. Code § 55-7-13d(a)(2). Plaintiffs agree that this is true.

4. The Court previously approved this same approach to nonparty fault notices in several related cases.¹

5. Cardinal Health and Plaintiffs therefore propose that Cardinal Health be required to (a) identify within 180 days of service of process those *categories* of nonparties who may be at fault;² and (b) identify nonparties-at-fault by name and last known address (or other specific identification) at a date to be determined by the Court at the Rule 26(f) conference(s) or thereafter.

6. By entering this stipulation, Plaintiffs do not waive any right they would otherwise have to object to the applicability of the statute to these cases.

7. A proposed Order is submitted along with this motion and stipulation.

Respectfully submitted,

CARDINAL HEALTH 110, LLC

By counsel:

/s/ Brian A. Glasser

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¹ *Cabell Cnty. Comm’n v. AmerisourceBergen Drug Corp.*, No. 3:17-cv-01665 (S.D. W. Va. Sept. 7, 2017) (Order) (ECF 92); *Kanawha Cnty. Comm’n v. RiteAid of Maryland, Inc.*, No. 2:17-cv-01666 (S.D. W. Va. Sept. 7, 2017) (Order) (ECF 114); *Fayette Cnty. Comm’n v. Cardinal Health, Inc.*, No. 2:17-cv-01957 (S.D. W. Va. Sept. 7, 2017) (Order) (ECF 82); *Wayne Cnty. Comm’n v. Rite Aid of Maryland, Inc.*, No. 3:17-cv-01962 (S.D. W. Va. Sept. 7, 2017) (Order) (ECF 81); *Boone Cnty. Comm’n v. AmerisourceBergen Drug Corp.*, No. 2:17-cv-02028 (S.D. W. Va. Sept. 7, 2017) (Order) (ECF 97); *Logan Cnty. Comm’n v. AmerisourceBergen Drug Corp.*, No. 2:17-cv-02296 (S.D. W. Va. Sept. 7, 2017) (Order) (ECF 91).

² Those dates in these cases as follows: *Lincoln County*, Nov. 20, 2017; *Town of Gilbert*, Nov. 20, 2017; *City of Welch*, Nov. 20, 2017; *Town of Kermit*, Nov. 20, 2017; *City of Williamson*, Dec. 3, 2017; *Mercer County*, Dec. 27, 2017; and *Town of Chapmanville*, Dec. 27, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2017, I electronically filed a true and correct copy of the foregoing **Cardinal Health's Unopposed Motion and Stipulation for Phased Identification of Nonparties at Fault** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record in this matter.

/s/ *Brian A. Glasser*

Brian A. Glasser